MANIFESTO

A EU Framework for Online Gambling 2.0

EGBA | European Gaming & Betting Association

» Key Recommendations

1. The European Commission must urgently review the implementation of its 2014 Recommendation on consumer protection and ensure EU member states comply with its measures by proposing concrete actions, including a legislative proposal if necessary.

2. The European Commission should come forward with a new policy for online gambling in the internal market taking into account recent digital developments, such as blockchain and artificial intelligence, and the regulatory challenges of EU member states, including 4th Anti-Money Laundering Directive and GDPR.

3. The successful European Commission expert group of national gambling authorities must be continued to encourage regular exchanges of best practices and dialogue. The "Declaration on cooperation between national gambling authorities"[4] should be evaluated and reinforced to provide a formal legal framework for regulatory cooperation among national gambling authorities.

4. Additional standardisation of national technical requirements. There is a wide range of areas related to online gambling that would benefit from standardisation - ranging from IT and auditing requirements, to the manner and format in which suspicious activities are reported to the relevant anti-money laundering authorities.

5. The compliance of draft national legislation on online gambling with EU law must continue to be assessed under the so-called notification procedure to resolve potential compliance issues before legislation enters into force.

6. The European Commission must fully act to enforce EU law, taking into account the latest case law of the Court of Justice of the EU.

7. The competence for setting and levying a point of consumption tax should remain with EU member states.

Designing an online gambling policy which is fit for today's digital challenges

Europe's current online gambling regulation is highly fragmented causing many problems for consumers, gambling authorities and online gambling companies. Since the launch of the EU Digital Single Market the European Commission has been committed to deepening integration of the digital economy and ensuring consumers are better protected online. But that has not been the case for the millions of Europeans who gamble online. The most recent European Commission Communication on online gambling in Europe is from 2012 and, given major technological and regulatory developments since, is out of date and should be reviewed.

The European Gaming and Betting Association (EGBA) is asking EU policymakers to act so that:

– EU citizens have a high level of consumer protection irrespective of where they reside.

– National gambling authorities are provided with a coherent cooperation framework.

– Regulated and EU-established online gambling operators can provide their services without undue administrative burdens in EU member states.

– The compliance of national gambling regulations with EU law is fully enforced.

Provide a high level of consumer protection to all Europeans

The safe provision of online gambling in Europe requires dedicated regulation which provides a high level of consumer protection for all citizens, especially those with problem gambling behaviour. Unfortunately, Europe's fragmented gambling policies are not sufficient to protect everyone because there is not the same high-level of consumer protection applied across all EU member states. For example, only some EU member states provide a self-exclusion register for players or require "no underage gambling" prohibition signs to be include in advertising messages. The European Commission issued its "Recommendation on consumer protection and advertising in the online gambling sector" in 2014. This Recommendation provided guidance to EU member states on the kind of consumer protection measures which should be included in national gambling regulation. However, a 2018 study by the City University London shows that most EU member states have failed to fully implement the Recommendation.[1]

Strengthen regulatory cooperation between national gambling authorities

Online gambling is inherently borderless and regulatory cooperation between EU member states is essential to address the various cross-border challenges which exist. Unfortunately, there is currently only limited regulatory cooperation between national gambling authorities due to a lack of a proper, formalised and coherent framework for cooperation. As a result, there are insufficient tools to enable national gambling authorities to effectively address common challenges, which include consumer protection and fraud prevention.

Deepen standardisation in the online gambling sector

Currently, the European Committee for Standardisation is developing a European standard for reporting requirements from online gambling companies to the various national gambling authorities.[2] This is a very welcome development as the technical standards which underpin the respective regulatory requirements of EU member states differ substantially. These differences cause unnecessary compliance and supervision costs for online gambling operators and authorities, whilst also increasing the risk of non-compliance with local regulations, due to diverging and often conflicting standards.

Ensure full enforcement of EU law

While most EU member states have introduced online gambling regulations, a substantial number of them have restrictions in place which conflict with EU law. In 35 preliminary rulings of the Court of Justice of the EU, involving a wide range of EU member states, the Court provided extensive legal guidance on the interpretation of the fundamental freedoms of the internal market around online gambling. According to the European Commission: "While Member States usually offer legitimate reasons for certain restrictions, they must nonetheless demonstrate the suitability and necessity of the measure in question, in particular the existence of a problem linked to the public interest objective at stake and the consistency of the regulatory system."[3] In 2017, the European Commission withdrew its infringements cases for online gambling, but given the overriding importance of EU law its enforcement should never be optional.

Respect EU member states' competence to levy a point of consumption tax

Generating tax revenue through a specific point of consumption tax has been one of the motivating factors for EU member states to regulate online gambling. At the same time, taxation is an important tool - by choosing the right tax base and rate - to design the regulated market in a way which ensures consumers play there rather than on the black market. Therefore, a fine balance needs to be struck between generating tax revenue and ensuring the level of taxation does not make the market economically unviable. This would cause consumers to look elsewhere, outside the regulated market, for more competitive products.

(1) Dr Margaret Carran, City University London (2018)
(2) European standard on reporting in support of supervision of online gambling services, European Committee for Standardisation (CEN) (2018)
(3) Communication "Online Gambling in the Internal Market", European Commission (2012)
(4) Cooperation Arrangement between the gambling regulatory authorities of the EEA Member States concerning online gambling services, European Commission (2015)

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